

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Amin B. Booker

Plaintiff,

-v-

9:12-CV-246 (NAM/ATB)

**J. Maly, Deputy Superintendent of Security,
Shawangunk Correctional Facility, et al.,**

Defendants.

APPEARANCES:

Amin B. Booker
98-A-6245
Five Points Correctional Facility
Caller Box 119
Romulus, New York 14541
Plaintiff, pro se

Hon. Eric T. Schneiderman, Attorney General of the State of New York
Douglas J. Goglia, Esq., Assistant New York State Attorney
The Capitol
Albany, New York 12224
Attorney for Defendants

Hon. Norman A. Mordue, Senior U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Upon referral pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c), United States Magistrate Judge Andrew T. Baxter issued an excellent and thorough Report-Recommendation and Order (Dkt. No. 113) addressing a number of motions in this *pro se* inmate civil rights case. Magistrate Judge Baxter recommended the following: that plaintiff's motion for summary judgment (Dkt. No. 69) be denied; that defendants' motion for summary judgment (Dkt. No. 103)

be granted and the complaint dismissed in its entirety as against all defendants; that plaintiff's motion for sanctions (Dkt. No. 107) be denied; and that defendants' cross-motion for sanctions (Dkt. No. 108) be denied. Magistrate Judge Baxter further denied plaintiff's motion for appointment of counsel (Dkt. No. 109).

Plaintiff has submitted an objection (Dkt. No. 114) to the Report-Recommendation and Order. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court reviews *de novo* those parts of a report and recommendation to which a party specifically objects. In view of the comprehensive nature of plaintiff's objections, the Court considers all issues *de novo*. The Court has reviewed the record in its entirety, including plaintiff's deposition testimony. Upon *de novo* review, the Court adopts Magistrate Judge Baxter's Report-Recommendation and Order in all respects. Reading plaintiff's papers liberally and interpreting them to raise the strongest arguments that they suggest, *see McPherson v. Coombe*, 174 F.3d 276, 280 (2d Cir. 1999), the Court grants summary judgment to defendants and dismisses the case.

Plaintiff also moves (Dkt. No. 115) for permission to submit late exhibits. He states that he is awaiting the arrival of weather reports, which he says are relevant to his Eighth Amendment claim of cruel and unusual punishment and his claim that his confinement in the special housing unit at Upstate Correctional Facility imposed an atypical and significant hardship because the cell was cold. David A. Rock, Superintendent of Upstate Correctional Facility, submitted a declaration regarding conditions at the facility, and stated that the cells were maintained at temperatures between 70 and 74 degrees. Weather reports establishing cold outdoor temperatures would not aid plaintiff in resisting summary judgment on this issue. The Court assumes that the early winter of 2010 was cold in Malone, New York; nevertheless, summary judgment dismissing

plaintiff's claim based on allegedly cold temperatures in his cell is warranted based on a number of factors. These include the undisputed evidence that plaintiff had been issued warm clothing including a sweatshirt, a winter coat, and a hat; the fact that plaintiff alleges only mild negative effects which are insufficient to support an inference that the cell was unreasonably cold; and plaintiff's testimony that there was a heating system and that some days he could feel the heat coming in.¹ Leave to submit late exhibits is denied.

Z It is therefore

ORDERED that plaintiff's motion (Dkt. No. 115) for leave to submit late exhibits is denied; and it is further

ORDERED that the Report and Recommendation (Dkt. No. 113) of United States Magistrate Judge Andrew T. Baxter is adopted and accepted; and it is further

V ORDERED that defendants' cross-motion for sanctions (Dkt. No. 108) is denied; and it is further

ORDERED that plaintiff's motion for sanctions (Dkt. No. 107) is denied; and it is further

ORDERED that defendants' motion for summary judgment (Dkt. No. 103) is granted; and it is further

W ORDERED that plaintiff's motion for summary judgment (Dkt. No. 69) is denied; and it is further

ORDERED that the action is dismissed with prejudice; and it is further

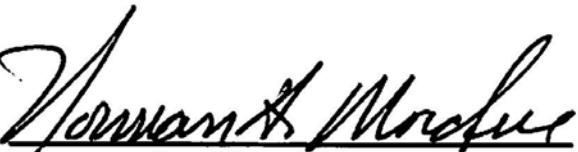
¹ Plaintiff testified:

Some days it would be you would feel the heat, actually you could feel the heat coming in there sometime and it was just so cold you could feel the cold as well, and they did have a heating system in there, but because it was more cold than hot, it didn't balance out.

ORDERED that the Clerk of the Court is directed to serve copies of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York.

IT IS SO ORDERED.

Date: March 31, 2014
Syracuse, New York


Norman A. Mordue
Senior U.S. District Judge

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